

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-665

February 21, 2003

LAURIE DOWNS, ET AL
Request for Commission Investigation
Into the New Central Maine Power
Company Transmission Line Proposal
For Eliot, Kittery and York by Laurie Downs,
Et Al vs. Central Maine Power Company

ORDER MODIFYING
TEMPORARY PROTECTIVE
ORDER NO. 1 AND NOTIFYING
CMP THAT CERTAIN INFO.
MAY LOSE ITS DESIGNATION
AS CONFIDENTIAL

On January 10, 2003, the Examiner issued Temporary Protective Order No. 1 in response to a motion by Central Maine Power Company (CMP). Protective Order No. 1 designated certain energy infrastructure information requested by Examiner's Data Request No. 1 as protected and subject to confidential treatment, citing 35-A M.R.S.A. § 1311-B. As the Commission had not yet decided to set the complaint for hearing, access to the designated confidential information was restricted to the Commission and its Staff.

By Order on January 24, 2003, the Commission set the complaint for hearing, creating an adjudicatory proceeding. By initiating a formal proceeding, section 1311-B(3) applies:

3. Access to information by parties in proceeding.

Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the Commission to obtain discovery of that information.

Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the Commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the Commission finds that specific limits are necessary to protect the public interest.

CMP has furnished responses to Examiners Data Request 01-01 through 01-05, all of which CMP labeled "Designated Confidential Information" pursuant to Protective Order No. 1. The Examiner and other Staff Advisors have now reviewed these responses.

On February 10, 2003, Counsel for the Public Advocate moved to permit access to the Public Advocate's Staff and engineering consultants. Counsel cited section 1311-B(3) as authorizing the Commission to do so. Counsel also stated that if higher protection was needed for this material, then additional protective mechanisms could be imposed, such as return of the material or inspection of the material only in certain locations. However, Counsel asserted that the Public Advocate, his Staff and consultants should not be completely restricted from access to the material.

After review of the data responses that are "Designated Confidential Information" pursuant to Protective Order No. 1, the Examiner concludes that the information within the data responses does not constitute critical energy infrastructure information that merits protection pursuant to section 1311-B. As an initial matter, it should be noted that section 1311-B grants to the Commission the discretion to decide that utility technical information poses a security threat:

1. Designation of information as confidential. If the Commission determines that public access to specific information about public utility technical operations in the state could compromise the security of public utility systems to the detriment of the public interest, the Commission shall issue an order designating that information as confidential.

Generally, this type of information, which has been referred to as critical infrastructure information, relates to emergency plans, or maps and technical diagrams that describe operating characteristics of large transmission lines, that for instance could reveal congested areas when moving energy supplies. The information in responses to EX 01-01 to EX 01-05 does not relate to facilities that are critical in that sense.

EX 01-01 asked for one-line diagrams in and around the proposed project area along with facility characteristics such as size, age and voltage ratings. CMP's response provided one-line electrical diagrams of the facilities. Release of the information in the response to EX 01-01 will not compromise the security of public utility systems to the detriment of the public interest. The type of technical information within the response does not create any greater security threat than is posed by the ability to freely observe these facilities from publicly accessible vantage points. Therefore, the information does not relate to facilities that could be called critical infrastructure.

EX 01-02 asked for distribution circuit maps showing current voltage, regulation and size of conductor. This information is similar to EX 01-01, except that the facilities are noted on geographical maps. Again, the information does not pertain to critical infrastructure. The facilities are directly observable and the availability of the technical data does not enhance any security threat to the public utility system.

The response to EX 01-03 provides distribution betterment recommendation summaries for the area for 2003. The information does not pertain to "critical infrastructure" similar to that described in EX 01-02. The response also describes facility upgrades that have not yet been constructed. Obviously such information is not yet pertaining to critical infrastructure. Moreover, even if eventually built, release of the description of substation equipment and distribution circuits does not provide any additional security threat.

EX 01-04 and Ex 01-05 asked for studies and reports on alternatives to the proposed transmission line as well as one-line diagrams of the proposed line.

Information pertaining to alternatives that are not planned to be implemented obviously do not yet rise to the level of critical infrastructure. More importantly, the one-line diagrams of the proposed line will not provide any greater security threat than that posed by public observation if the alternative is built. If the alternative is not built, then obviously the information is not a security threat.

Ordering paragraph 3 of Protective Order No. 1 states that parties may challenge the designation of documents as confidential upon reasonable notice and opportunity to be heard. Even though this "challenge" is by the Advisory Staff, the Examiner will allow CMP until February 27th to respond in writing to show that its responses to EX 01-01 through EX 01-05 should remain as "designated confidential information" within Protective Order No. 1.

In the meantime, pursuant to section 1311-B(3), the Examiner finds that access to information designated as confidential pursuant to Temporary Protective Order No. 1 does not need to be restricted in the manner ordered on January 10, 2003. Parties to this proceeding have rights to discovery and the Examiner finds that the public interest does not require that the parties seeking access to the responses to EX 01-01 through EX 01-05 be denied such access. Accordingly, ordering paragraph 4 of Protective Order No. 1 is amended to read:

4. That, until this Order is modified or revoked, access to Designated Confidential Information shall be limited to (i) Commission Members and Staff; (ii) the Public Advocate, his Staff and consultants; (iii) intervenors Laurie Downs, Kathleen and Richard Boston and consultants; (iv) a stenographer or reporter recording any hearing in connection with this proceeding; and (v) counsel for or any other representative of CMP.

CMP is free to require intervenors to sign confidentiality agreements, including requiring that information that remains "Designated Confidential Information" be returned to CMP at the conclusion of the case.

Dated at Augusta, Maine, this 21st day of February, 2003.

BY ORDER OF THE HEARING EXAMINER

James Buckley